



David B. Cohen
Mayor

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Public Hearing Date:	February 23, 2009
Zoning and Planning Action Date:	To be determined
Board of Aldermen Action Date:	To be determined
90-Day Expiration Date:	To be determined

DATE: February 20, 2009

TO: Ald. Brian E. Yates, Chairman, and
Members of the Zoning and Planning Committee

FROM: Michael Kruse, Director of Planning and Development
Jennifer Molinsky, Principal Planner/Zoning and Planning Coordinator

SUBJECT: **PUBLIC HEARING**
Petition #108-07(2) DIRECTOR OF PLANNING AND DEVELOPMENT
recommending that Chapter 30 of the Revised Zoning Ordinances, 2007, as
amended, be further amended by deleting in Section 30-15, Table 1, Footnote 7 in
its entirety.

CC: Board of Aldermen
Planning and Development Board
Mayor David B. Cohen
John Lojek, Commissioner of Inspectional Services
Marie Lawlor, Assistant City Solicitor

RECOMMENDATIONS: SEE "RECOMMENDATIONS" SECTION WITHIN.

The purpose of this memorandum is to provide the Board of Aldermen, Planning and Development Board, and the public with technical information and planning analysis which may be useful in the decision making process of the Boards. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Zoning and Planning Committee of the Board of Aldermen will consider in its discussion at a subsequent Working Session.

This memo provides a summary of information presented in previous memos written prior to public hearings and working sessions regarding Petition #108-07. Petition #108-07 recommended amendments to Section 30-15 Table 1, Footnote 7(3). In working sessions in the fall of 2008, members of the Zoning and Planning Committee discussed the possibility of eliminating Sec. 30-15, Table 1, Footnote 7 in its entirety. Because this approach exceeded the scope of Petition #108-07, the item was redocketed as Petition #108-07(2) and will be heard on February 23, 2009.

I. BACKGROUND

Concerns have been raised by members of the Board of Aldermen and others regarding Section 30-15, Table 1, Footnote 7(3), which provides an exemption from floor area ratio (FAR) calculations when alterations to existing structures result in less than 50% demolition of the existing structure. The Commissioner of Inspectional Services has questioned whether the original intent of Footnote 7(3) may have been to allow limited reconstruction of existing dwellings that already exceeded FAR, but not enlargements. However, in practice, *this provision has been utilized by applicants to seek significant enlargements of existing dwellings without FAR limitation.*

In the past several years, the Zoning and Planning Committee has considered various approaches to addressing the "loophole" created by the 50% demolition provision. In 2006, the issue was referred to the Zoning Task Force chaired by Ald. Ted Hess-Mahan for further study and resulting in Petition #108-07, which recommended amendments to define "50% demolition" and to limit the size of expansions. Petition #108-07 was heard on January 28, 2008 and again on June 23, 2008 (this hearing was closed September 8, 2008). In working sessions in the fall of 2008, the Committee indicated interest in eliminating Footnote 7 in its entirety. Since this approach exceeded the scope of Petition #108-07, the item was redocketed as #108-07(2).

Footnote 7 currently reads:

Section 30-15, Table 1, Footnote 7: FAR requirements shall apply only to (1) all above-grade new construction; (2) total demolition of a single family residential structure or dwelling when the owner seeks to replace it with a two family structure or dwelling; (3) reconstruction where more than fifty (50) per cent of an existing structure is demolished; and (4) in a multi-residence zoning district, construction of any residential dwelling unit which lies in whole or in part outside the walls, i.e., the existing footprint, of any existing residential dwelling unit, regardless of whether such construction does or does not increase the number of dwelling units on the lot.

II. ANALYSIS

The Planning Department believes that the only significant effect of removing Table 1, Footnote 7 in its entirety will be to close the loophole allowing significant enlargements of existing dwellings without a limit on FAR. Deleting the other provisions of Footnote 7 should not have a significant effect on the City's Zoning Ordinance.

Below, each part of Footnote 7 is discussed separately:

Provision (1) states that FAR requirements shall apply to “all above-grade new construction.” This provision implies that below grade construction, such as basements, is exempt from FAR, but this intent is more clearly stated elsewhere in the ordinance (see **Sec. 30-1**, definition of “floor area, gross,” which exempts basements from floor area calculations). Removing this section will have the further effect of clarifying that FAR applies to all residential structures, whether new or existing, *but will not change the status of these existing structures as conforming, lawfully nonconforming, or noncompliant with respect to FAR.*

Provision (2) states that FAR requirements shall apply to “total demolition of a single-family residential structure or dwelling when the owner seeks to replace it with a two-family structure or dwelling.” Table 1 provides FAR allowances for single- and two-family dwellings in multi-residence districts, and there seems to be no added value of stating, as Footnote 7(2) does, that it applies when one type of dwelling is replaced with another.

Provision (3) states that FAR requirements shall apply to “reconstruction where more than fifty (50) per cent of an existing structure is demolished.” Removal of provision (3), the “50% demo” provision, will mean that FAR requirements will apply to all additions and enlargements to existing property, eliminating the possibility that a property owner can significantly expand a property without FAR restrictions if less than 50% of the original structure is demolished.

Provision (4) states that FAR requirements shall apply in a multi-residence zoning district for “construction of any residential dwelling unit which lies in whole or in part outside the walls, i.e., the existing footprint, of any existing residential dwelling unit, regardless of whether such construction does or does not increase the number of dwelling units on the lot.” Again, this provision is unnecessary; the FAR requirements in Table 1 will still apply to this special circumstance whether or not it is spelled out in Footnote 7(4).

III. PROPERTIES AFFECTED BY CATASTROPHE

At its October 27 working session, the Zoning and Planning Committee expressed concern that by omitting part (3) of the footnote, the 50% demolition rule, lawful nonconforming residences damaged or destroyed by catastrophe might not be legally rebuilt. After review by the Planning Department, Commissioner of Inspectional Services, and Law Department, we have determined that the current zoning ordinance already permits reconstruction, and even expansion, of nonconforming single- and two-family residential structures, for any reason, provided that nonconformity is not increased. It is therefore our opinion that, if Footnote 7 is removed, no additional “catastrophe clause” is needed to provide relief for nonconforming single- and two-family dwellings.

IV. RECOMMENDATIONS

The Planning Department recommends addressing the loophole presented by the 50% demolition provision in Sec. 30-15, Table 1, Footnote 7, by ***Deletion of Sec. 30-15, Table 1, Footnote 7 in its entirety; and renumbering of Footnotes 8 and 9.***